

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. On August 12, 2003, a family court magistrate acted upon the petitioner's motion to reduce his child support payments because he was in jail. His current support was reduced from \$66.51 per week to \$50.00 per month. He was also ordered to pay \$6 per month to OCS towards an arrearage which was determined as of July 31, 2004 to be \$7,121.54.

3. The petitioner has paid nothing on the current support since the order and the recently accumulated unpaid amounts have been added to the arrearage owed to OCS.¹

4. The petitioner asked for an administrative review on September 3, 2003, which was received two days after the deadline. The review was held anyway on September 9, 2003. The petitioner argued that it was not fair for OCS to report his arrearage to a credit bureau because he was incarcerated and was in no position to pay it at present. He said that he would pay the arrearage upon his release from prison in February of 2005. The administrative reviewer concluded that the petitioner's case met the criteria for reporting an arrearage to a credit bureau and that there was no ground to excuse reporting due to the petitioner's incarceration.

5. The petitioner appealed that decision to the Board. Following a hearing, OCS submitted documentation and argument with regard to this case. The petitioner was afforded an opportunity to respond to OCS' submission but did not take advantage of that opportunity.

¹ The fact that the arrearage is accruing to OCS indicates that the child's mother must be a RUFA recipient.

ORDER

The decision of OCS is upheld.

REASONS

Federal regulations governing state plans for support collections require that the states establish procedures for reporting overdue support owed by a non-custodial parent to a consumer reporting agency. 45 CFR § 302.70(a)(7). Vermont's procedure is set forth at 15 V.S.A. § 793 which provides as follows:

Credit reporting

- (a) Information regarding the amount of arrearages owed by an obligor may be made available by the office of child support to any consumer credit bureau organization upon the request of the organization, only if the amount of the arrearages is at least one-quarter of the annual support obligation and the office of child support has notified the obligor by first class mail or other means likely to give actual notice of the proposed action and given a period not to exceed 20 days to contest the accuracy of the information with the office of child support. In computing the amount of an arrearage, any arrearage accumulated after a motion to modify has been filed shall not be included.
- (b) The office of child support shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the account balance.

The facts indicate that OCS did notify the petitioner of its intention to report his balance to a credit-reporting bureau and gave him more than twenty days to contest the

accuracy of the information. His appeal was late but was heard and the decision was made to uphold the decision based on the above law.

OCS maintains that it reports all eligible arrearages to credit reporting agencies. It says that third parties extending credit rely on OCS to let them know if parties have child support debts. OCS makes its decisions based on court orders and not on claims by obligors based on difficulties paying the obligations. As the petitioner's arrearage is well in excess of one-quarter of his annual current support obligation of \$600, OCS maintains that it is well within its rights to report the petitioner's large arrearage to credit bureaus.

It cannot be said that OCS' decision is contrary to the regulations. The Vermont court was well aware that the petitioner was incarcerated and yet continued to establish an arrearage and some ongoing support. Following a hearing on the petitioner's motion to modify, the Court established an arrearage of \$7,121.54 owed to OCS. The only defense the petitioner has under the above statute is the accuracy of the information to be reported, not his current ability to repay it.

OCS does not disagree that the amount that should be reported is not the original amount in its August 7 notice, but the amount set by the Court in its August 12, 2003 order plus any further unpaid amounts which have accrued since that time.² The petitioner does not argue that the information is inaccurate. There is nothing in the regulations that would prevent OCS from reporting an accurately calculated arrearage to a credit-reporting agency. The petitioner can have the report to the credit agency expunged as soon as he returns to the community and pays the arrearage. As OCS' decision was in accord with the above regulations, the Board must uphold the decision. Fair Hearing Rule 17, 3 V.S.A. § 3091(d).

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² OCS was prevented by the above regulation from adding unpaid current amounts to the arrearage once the petitioner filed a motion to modify. However, that is no longer an issue as the court has made a ruling on the motion and established a new payment amount and unpaid arrearage.